



REFERENCE: 14/1/1/E3/8/6/3/L903/17

ENQUIRIES: Ms N Ndlumbini

The Municipal Manager

Hessequa Municipality

PO Box 29

Riversdale

6670

Attention: Mr Johan Jacobs

BY EMAIL

Tel: 028 713 8000

Email: mm@hessequa.gov.za

COMPLIANCE NOTICE

Dear Sir

COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998

1. The Department's Pre-Compliance Notice issued on 26 August 2017, your representations dated 13 October 2017, the Department's letters dated 14 November 2017, your correspondence's dated 16 January 2018 and 30 January 2018 as well the meeting between the officials from this Department and the Hessequa Municipality dated 21 February 2018 and your correspondence dated 26 February 2018 has reference.
2. Having considered your representations and all the evidence in this matter, I, Dr Eshaam Palmer, in my capacity as an Environmental Management Inspector Grade 1, hereby issues Mr Johan Jacobs representing the Hessequa

Municipality with a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 ("NEMA").

3. This Compliance Notice relates to non-compliance with the provisions of section 24F of the NEMA. No activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1 of 2014 may commence without environmental authorisation from the competent authority.

Details of conduct constituting non-compliance

4. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the National Environmental Management Act, 1998 ("NEMA") a site inspection was conducted at Preekstoel Beach, erf 291, Still Bay by an Environmental Management Inspector from the Department's Directorate: Environmental Law Enforcement and an official from Land Management on 07 August 2017, it was confirmed that you have commenced with excavation of sand and constructed a boardwalk within the littoral active zone of the sea on the abovementioned property without the requisite environmental authorisation.

GPS coordinates: S 34° '22'01.21."; E21° 27' 00.89"



Aerial map: Location of alleged illegal activity.

5. The Department wishes to advise that on 4 December 2014, the Minister of Environmental Affairs promulgated the 2014 EIA Regulations. These Regulations came into effect on 8 December 2014 and was amended on 7 April 2017. Accordingly, activities which commenced prior to 7 April 2017 and which are similarly listed in the 2014 Regulations require prior environmental authorisation.
6. On considering the evidence before me there are reasonable grounds to believe that you have commenced the following activities without environmental authorisation:

EIA Regulations Listing Notice 1 of 2017:

Activity 15:

The development of structures in the coastal public property where the development footprint is bigger than 50 square metres, excluding—

- (i) the development of structures within existing ports or harbours that will not increase the development footprint of the port or harbour;*
- (ii) the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;*
- (iii) the development of temporary structures within the beach zone where such structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared; or*
- (iv) activities listed in activity 14 in Listing Notice 2 of 2014, in which case that activity applies.*

Activity no. 19A

The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells grit, pebbles or rock of more than 5 cubic metres from-

- (i) The seashore; or
- (ii) The littoral active zone, an estuary or a distance of 100 metres inland of the high water mark of the sea or estuary, whichever distance is the greater –
- (iii) The sea-
but excluding where such infilling, depositing, dredging, excavation, removal or moving-
 - (a) Will occur behind a development setback;
 - (b) Is for maintenance purposes undertaken in accordance with a maintenance management plan;
or
 - (c) Falls within the ambit of activity 21 in this Notice, in which case that activity applies;
 - (d) Occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or
 - (e) Where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.



Photo 1: illegal excavation of sand and constructed boardwalk



Before:



After:

Photo 2 & 3: Illegal excavation of sand and constructed boardwalk

7. **You are hereby instructed to:**

7.1 Immediately cease the above listed activities;

7.2 submit to the Department within **30 (thirty) calendar days** of receipt of this Compliance Notice a rehabilitation plan and a maintenance management plan (MMP) compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:

7.3 assessment and evaluation of the impact on the environment; and

7.4 identification of proposed remedial and/or mitigation measures.

8. Approval of the plan by the Department does not remedy the unlawful commencement of the above activities, which remain unlawful in terms of section 49A (1) (a) and/or (d) of the NEMA.

9. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.

10. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.

11. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

Varying this Compliance Notice

12. If you would like me to vary this Compliance Notice or extend the period to which it relates, you may make representations to me, in writing, to do so.

Failure to comply with this Compliance Notice (section 31N of the NEMA) and related offences in terms of the NEMA

13. The NEMA makes provision for the criminal prosecution of officials of an organ of state, such as national or provincial government departments, municipalities or public entities.
14. In terms of section 49A(1)(a) of the NEMA it is an offence to commence a listed activity without environmental authorisation. A person convicted of such an offence is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.
15. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of such an offence is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.
16. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:
 - 16.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
 - 16.2 take any steps necessary to ensure compliance with the provisions of the law, permit or authorisation to which this Compliance Notice relates and recover from you the cost of doing so.

Procedure for lodging an objection to this Compliance Notice (section 31L and 31M of the NEMA)

17. If you wish to lodge an objection to this Compliance Notice, you may do so by making representations, in writing, to the Provincial Minister of Environmental Affairs and Development Planning ("the Minister") within 30 days of receipt of this Compliance Notice.

18. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.

19. The objection must be in writing and forwarded to the Appeal Administrator, Mr Jaap de Villiers at the contact details below and must be accompanied by a statement detailing the grounds of the objection and supporting documentation, if any.

By post: Western Cape Ministry of Local Government, Environmental Affairs and Development Planning
Private Bag X9186
CAPE TOWN
8000

By facsimile: (021) 483 4174

By hand: Attention: Mr Jaap de Villiers (Tel: 021 483 3721)
Room 809
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: Jaap.DeVilliers@westerncape.gov.za

20. Irrespective of any representations you may make to me or to the Minister, you must comply with this Compliance Notice within the time period stated

in the Compliance Notice, unless the Minister agrees to suspend the operation of this Compliance Notice.



Dr E Palmer

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 26/4/2018

Cc: Mr Harold Basson (Hessequa Municipality), harold@hessequa.gov.za

Shagon Carelse (Hessequa Municipality), email: shagon@hessequa.gov.za

Andre Hansen, (Hessequa Municipality), email: andre@hessequa.gov.za
